

KIM R. WILSON (3512)  
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*Attorneys for Kim R. Wilson and  
the Kim R. Wilson IRA*

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IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH  
CENTRAL DIVISION

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SECURITIES AND EXCHANGE  
COMMISSION

Plaintiff,

v.

AMERICAN PENSION SERVICES, INC.,  
and CURTIS L. DeYOUNG,

Defendants,

**REPLY MEMORANUM IN SUPPORT OF  
MOTION TO INTERVENE BY KIM R.  
WILSON AND CORRECTION OF THE  
RECORD**

Case No. 2:14-cv-00309-RJS-DBP

Judge Robert J. Shelby  
Magistrate Judge Dustin B. Read

[Filed Electronically]

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Kim R. Wilson and the Kim R. Wilson IRA, through counsel, submit this Reply  
Memorandum in Support of their Motion to Intervene (Docket #251).

**CORRECTION OF RECORD**

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As a first order of business, in Kim R. Wilson's Response and Objection to the  
Receiver's Proposed Plan of Liquidation it was stated:

At no time have the subject IRAs held anything other than real property.  
At no time could the real property have been subjected to any loss, theft,

misuse, defalcation, embezzlement or other mischief by Receivership Defendants. The real property assets were never at a risk for loss.

Since the pleading was filed, Mr. Wilson was able to retrieve from document storage some 100 miles distant from Salt Lake City his original file in the matter which confirms what the Receiver recites as history of the subject IRA account that the Kim R. Wilson IRA and the Vicky S. Wilson IRA were in fact funded through a cash rollover of two similar Merrill Lynch IRAs. Upon establishment of new IRAs, American Pension Services ("APS") was then directed to and did acquire the real estate held by their APS administered IRAs. Records disclose that on June 29, 1987 (27 years ago) the APS-Administered Kim R. Wilson IRA received a cash disbursement of \$3,786.51 from Merrill Lynch and the next day disbursed \$3,500 to purchase the real property. Likewise, on June 29, 1987, the Vicky S. Wilson IRA received a cash distribution of \$11,797.04 from Merrill Lynch and the next day disbursed \$11,500.00 to purchase the real property.

So in actuality over 27 years ago, APS held overnight \$15,000.00 which was promptly disbursed the next day to purchase the real estate in fee which has been held by the APS-administered accounts since that date. See account statements of Kim R. Wilson IRA and Vicky S. Wilson IRA attached hereto as Exhibits "A" and "B".

#### **FURTHER CORRECTION OF RECORD**

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In Paragraph 8 of her Opposition to Motion to Intervene (Docket Entry No. 325),

Receiver states:

Instead of submitting his response to the Receiver as ordered by the Court, Mr. Wilson, who is a licensed attorney, submitted a response to the Receiver's Proposed Plan of Liquidation on October 20, 2014, by electronically filing his response with the Court.

Contrary to the implication of Receiver's assertions, Mr. Wilson also emailed the completed APS Client/Creditor Response to Proposed Plan of Liquidation form to counsel for Receiver on October 20, 2014, as instructed by Receiver. See email confirmation form attached hereto as Exhibit "C".

### **ARGUMENT**

The Receiver asserts that the Motion to Intervene fails to comply with Fed.R.Civ.P. 24(c) in that it was not accompanied by a pleading that sets out the claim or defense for which intervention is sought. Mr. Wilson asserts that in a proceeding which seeks Court approval of Receiver's Plan of Liquidation that his Response and Objection to the Receiver's Proposed Plan of Liquidation is a substantially sufficient "pleading" for intervention and that the requirement of creating an artificial "complaint" or "answer" when none is called for as a condition of intervention and participation in the proceeding makes no legal nor procedural sense.

Rule 24(a)(2) provides for intervention as a matter of right as follows:

24 (a) Intervention of Right. On timely motion, the court must permit anyone to intervene who:

(1) . . .

(2) claims an interest relating to the property or transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest, unless existing parties adequately represent that interest.

The Kim R. Wilson IRA is property and it holds a 15 acre parcel of real property which Mr. Wilson "holds" and both are the subject of this action.

The application to intervene is timely made because there has been no court consideration of or ruling upon Receiver's Plan of Liquidation.

Mr. Wilson's interest is impaired because Receiver's Plan of Liquidation proposes to "assess" or "tax" Mr. Wilson's interest in a sum equal to ten percent (10%) of its value as a condition of his regaining control of his IRA. How is that not being impaired by any definition of impairment? And Mr. Wilson's interest is not adequately represented by Receiver. Receiver has opposed and the court has so far declined to approve formation of any committee or other representative body to speak for the account holders as is the common procedure in similar bankruptcy proceedings. No such body exists to speak for Mr. Wilson. The Receiver has concocted a program to receive "comments" from account holders and states she intends to consider and make some sort of summary report of these comments to the Court. Mr. Wilson chooses not to have his legal positions articulated only through the Receiver, who seeks to impair his already protected interest and assess money in furtherance of that plan.

Such a program cannot in any way constitute "due process" of the basic right to participate in this legal proceeding and be heard in opposition to official court action in an open legal proceeding.

Mr. Wilson prays that his Motion to Intervene be granted and that he have the right to speak and be heard in matters relating to Receiver's Plan of Liquidation.

DATED this 21st day of November, 2014.

SNOW, CHRISTENSEN & MARTINEAU

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/s/ Kim R. Wilson

Kim R. Wilson ([krw@scmlaw.com](mailto:krw@scmlaw.com))  
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Post Office Box 45000  
Salt Lake City, Utah 84145-5000  
Telephone: (801) 521-9000

**CERTIFICATE OF SERVICE**

I certify that on this 21st day of November, 2014 copies of the foregoing **MOTION TO INTERVENE BY KIM R. WILSON AND MEMORANDUM IN SUPPORT**, which was filed electronically, were served upon all parties receiving notice via the Court's ECF System.

/s/ Kim R. Wilson

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# EXHIBIT A

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PLEASE RETAIN THIS STATEMENT FOR TAX PURPOSES.

# EXHIBIT B

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# EXHIBIT C

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**Erin Casaday**

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**From:** Kim Wilson [krw@scmlaw.com]  
**Sent:** Monday, October 20, 2014 4:43 PM  
**To:** brownld@ballardspahr.com  
**Cc:** Kim Wilson; 026683\_0001 SEC v\_ American Pension Services\_Kim R\_ Wilson and Kim R\_ Wilson IRA Email  
**Subject:** Response to Plan of Liquidation [IWOV-iDocs.FID823482]  
**Attachments:** APS Client-Creditor Response to Plan of Liquidation.pdf

*On behalf of Kim R. Wilson*

**Kim R. Wilson**

Attorney  
Office Direct: (801) 322-9154  
Cell: (801) 916-7000

**SNOW, CHRISTENSEN & MARTINEAU**

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The information contained in this e-mail and any attachments are confidential and solely for the use of the intended recipient. If the intended recipient is our client, then this information is also privileged attorney-client communication. Unauthorized use or disclosure of this information is prohibited. If you have received this communication in error, do not read it. Please delete it from your system without copying it, and notify the sender by e-mail or calling (801) 521-9000, so that our address record can be corrected. Thank you.

APS Client/Creditor Response to Proposed Plan of Liquidation

Name: Kim R. Wilson / Kim R. Wilson IRA

Client Number: 2387

Address: 661 N. Saddle Hill Road, Salt Lake City, UT 84103

Phone: 801-916-7000

E-mail: krw@scmlaw.com

Nature of Response (you may attach additional pages)

See attached Response and Objection to the Receiver's Proposed  
Plan of Liquidation

Kim R. Wilson

hereby declares to the best of my knowledge and under penalty of perjury under the laws of the State of Utah and the United States of America that the foregoing is true and correct.

Dated this 20 day of October, 2014,

  
Signature

Please submit this objection form to Diane Thompson, Receiver of APS, c/o Mark R. Gaylord, 201 South Main Street, Suite 800, Salt Lake City, Utah 84101, no later than OCTOBER 20, 2014. You may also submit this objection form via email to brownld@ballardspahr.com. Please be sure to write in the subject line of the email "Response to Plan of Liquidation." Thank you.

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Plaintiff,

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AMERICAN PENSION SERVICES, INC.,  
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Defendants,

**KIM R. WILSON'S RESPONSE AND  
OBJECTION TO THE RECEIVER'S  
PROPOSED PLAN OF LIQUIDATION**

Case No. 2:14-cv-00309-RJS-DBP

Judge Robert J. Shelby  
Magistrate Judge Dustin B. Read

[Filed Electronically]

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Kim R. Wilson ("Mr. Wilson"), owner of the Kim R. Wilson IRA, and a client/account holder of American Pension Services ("APS"), the subject of the receivership case, hereby responds and objects to approval of the Proposed Plan of Liquidation (the "Plan") submitted by Diane Thompson, the court-appointed receiver (the "Receiver"), and asks that, for the reasons set forth herein, approval of the Plan be denied insofar as it calls for Mr. Wilson (and any others similarly situated) to be assessed any loss associated with theft, misappropriation, malfeasance,

or other actions taken by APS and Curtis DeYoung (collectively the "Receivership Defendants").

In support of this objection, Mr. Wilson respectfully states as follows:

**GENERAL OVERVIEW OF MR. WILSON'S CLAIM, AND THE RECEIVER'S  
PROPOSED TREATMENT OF MR. WILSON'S ILLIQUID REAL ESTATE ASSET  
HELD BY APS**

Over 25 years ago, Kim R. Wilson and his wife, Vicky S. Wilson, established separate IRAs, which together acquired in fee a single parcel of unimproved real property in Cache County, Utah. On December 29, 2010, Vicky S. Wilson died and the Kim R. Wilson IRA succeeded to complete ownership of the real property.

At no time have the subject IRAs held anything other than but real property. At no time could the real property have been subjected to any loss, theft, misuse, defalcation, embezzlement or other mischief by Receivership Defendants. The real property assets were never at risk for loss.

It is therefore inequitable to lump Mr. Wilson's account with any other types of investments and to assess him or his account for any sum to cover losses to account holders who had rendered themselves vulnerable by virtue of the types of investments they chose to have held in their accounts.

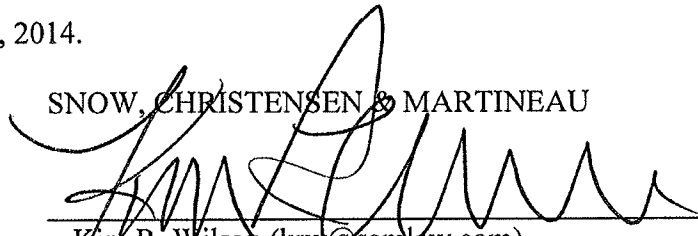
Mr. Wilson's legal position is very similar to that of Kent A. Jordan who filed his Objection on October 14, 2014 as Document No. 245. With permission, Mr. Wilson adopts the arguments of Mr. Jordan, and hereby joins in and incorporates such legal arguments as if they are his own.

**RELIEF REQUESTED**

Accordingly, Mr. Wilson respectfully requests the Court deny approval of Receiver's Plan.

DATED this 20th day of October, 2014.

SNOW, CHRISTENSEN & MARTINEAU

A large, stylized handwritten signature in black ink, likely belonging to Kim R. Wilson, is written over the printed name and firm name.

Kim R. Wilson ([krw@scmlaw.com](mailto:krw@scmlaw.com))

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/s/ Kim R. Wilson